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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,851	03/28/2001	Susumu Yoshiwara		9525

7590 09/24/2003

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EXAMINER

AMIRI, NAHID

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/818,851

Applicant(s)

YOSHIWARA ET AL.

Examiner

Nahid Amiri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 210 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 is/are allowed.
- 6) ☒ Claim(s) 1,8-16 and 19 is/are rejected.
- 7) ☒ Claim(s) 2-7, and 17-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 15 August 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 1, 14-16** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is confusing since the preamble of the **claim 1** is for earthquake resistance structure but applicant only claiming the a single construction block. Therefore applicant should clarify it. **Claims 14-16** it appears applicant claiming the method of forming the blocks plus method of making a structure using the block.

### *Claim Rejections - 35 USC § 103*

**Claims 1, 8-13 and 19** stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 1,487,578 E. H. Kirkpatrick, as set forth in previous office action.

### *Allowable Subject Matter*

**Claims 2-7 and 17-18** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Claim 14** would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

**Claims 15-16** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 16 July 2003 have been fully considered but they are not persuasive.

Applicant asserts that the cited art does not disclose the limitation of aggregate pieces within the lower block extending from lower surface and forming the major lower surface. Examiner disagrees.

Cited art used as the basis for rejection under 35 USC § 103 is only required to disclose the claimed limitations. In regard to **claim 1** of the applicant's argument a) the claim is prefaced as an earthquake resistant structure but applicant only claims a single construction block. b) Since the claim is drawn to a single block, Kirkpatrick's block can be viewed in any orientation. Fig. 1 shows the block with aggregate (10) on the "lower" surface. d) Applicant states that the aggregate pieces of Kirkpatrick are not in direct contact with each other. This appears to be a matter of opinion as the aggregate appear to be in direct contact as viewed by the examiner, especially at the external surface. e) The tapered edge of the block near the aggregate face is considered part of the block sides. f) The cement for the block holds the aggregate pieces together and will naturally transfer the loads. While it is clear that Kirkpatrick's block is intended for a different purpose than applicant's block, claim 1 is very broad and reads on the basic structure of Kirkpatrick's block.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

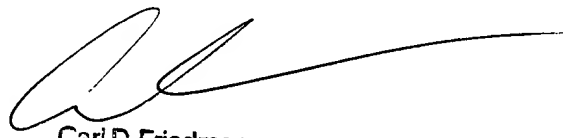
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (703) 305-4241 and Fax number is 703-872-9326. The examiner can normally be reached on Monday-Friday from 8:00-5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Carl Friedman can be reached at (703) 308-0839.

na 

September 16, 2003

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600